



COUNCIL AGENDA: 12-13-05

ITEM: 2.13

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

**SUBJECT: FLOOD HAZARD ORDINANCE
REVISIONS**

DATE: 11-21-05

Approved

Date

11/30/05

Council District: Citywide

RECOMMENDATION

Approval of an ordinance of the City of San José amending Chapter 17.08 of Title 17 of the San José Municipal Code to add construction standards for Flood Zone A99, accessory structures, crawlspaces, and add the requirement for cumulative tracking of improvements to existing structures; and other minor revisions to conform the City's Flood Hazard Ordinance to the National Flood Insurance Program regulations.
CEQA: Exempt, File No. PP05-217.

BACKGROUND

The City of San José has been an active participant in the National Flood Insurance Program (NFIP) since 1982. Participation in the NFIP is voluntary and is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risks to new and existing developments in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. The City of San José adheres to the NFIP regulations by administering land use and construction permits in conformance with Municipal Code Chapter 17.08, Special Flood Hazard Area Regulations (Flood Hazard Regulations).

These proposed revisions to the City's Flood Hazard Regulations are necessary to recognize the recent changes in San Jose's 100-year floodplains (areas having a one-percent or greater chance of being flooded in any given year) due to the substantial flood improvements provided by the Downtown and Lower Guadalupe Flood Protection Projects (Guadalupe Projects). In addition, this revision will update the City's Flood Hazard Regulations to comply with revised NFIP standards.

ANALYSIS

The proposed changes consist of five (5) main categories:

1. Construction Standards for Flood Zone A99, Accessory Structures, and Crawlspace:

Flood Zone A99 – On October 6, 2005, a number of properties within the Guadalupe watershed (north of Interstate 280 to Highway 237) were redesignated to a new Flood Zone A99. This flood zone change recognizes the substantial completion of the Santa Clara Valley Water District's Guadalupe Projects. Flood Zone A99 is an interim flood hazard zone for properties that will ultimately be removed from the 100-year floodplain with the final completion of the Guadalupe Projects. Flood Zone A99 will provide the community with the flexibility to recognize the benefits of the Guadalupe Projects during the City's review of development applications within this zone. Currently, this flood zone is not defined in the City's Flood Hazard Regulations. As such, the City does not have the ability to legally regulate development within this zone. Approval of this change will provide the City with the adequate authority to apply reduced regulations on development within this zone in an efficient and orderly fashion.

- a. **Accessory Structures** – Current NFIP regulations allow for the construction of low-cost, small detached accessory structures in 100-year floodplains used solely for parking or limited storage as long as the City establishes a definition for a low-cost and small accessory structure. Approval of this change will provide the City with the adequate authority to properly regulate these structures.
 - b. **Crawlspace** – Crawlspace foundations are commonly used to elevate the lowest floors of residential buildings above the 100-year flood elevation. This change provides the standards for crawlspace construction in 100-year floodplains that are currently not well defined in the City's Flood Hazard Regulations. This change also includes the requirements for below-grade crawlspaces which were previously not permitted as they were considered basements under the NFIP regulations. Approval of this change will provide the City with the adequate authority to properly regulate this type of construction.
- 2. Cumulative Substantial Improvement Requirement** – Current NFIP regulations allow improvements to existing buildings in 100-year floodplains without meeting the flood protection requirements for new buildings as long as the improvement is not considered a substantial improvement (improvement that does not equal or exceed 50% of the structure's pre-improvement value). Since cumulative improvements to a structure can greatly increase the City's overall flood damage potential as well as the insurance liability for the NFIP, this change will require that improvements be calculated

cumulatively over a period of five (5) years. By adopting this cumulative substantial improvement requirement in this revision, the City will receive additional credits under the NFIP Community Rating System (CRS) Program that qualifies City residents for reduced flood insurance premiums as a result of the City's activities that exceed the NFIP's minimum standards for floodplain management.

3. **Requirement for subdivision proposals in unnumbered A flood zones to provide 100-year flood elevation data** – Unnumbered A flood zones do not have established 100-year flood elevations. Current NFIP regulations require that subdivision proposals in these zones provide 100-year flood elevation data in order to properly design and protect these properties from potential flood damage. Adding this requirement in this revision will conform the Flood Hazard Regulations to the NFIP regulations.
4. **New and Revised Definitions** – These proposed modifications would clarify and make the definitions in the City's Flood Hazard Regulations consistent with NFIP regulations.
5. **Minor technical and conforming changes** – These changes consist of numbering and formatting revisions to the entire ordinance.

OUTCOME

Approval of these changes will allow the City to properly regulate construction within the new Flood Zone A99, construction of accessory structures, and construction of crawlspaces. Additionally, the remainder of the changes will conform the City's Flood Hazard Regulations to the NFIP regulations.

PUBLIC OUTREACH

The Santa Clara Valley Water District and a consortium of private consulting engineers have been notified of the proposed changes to the City's Flood Hazard Regulations. Public Works staff also posted the attached revisions (with the changes underlined) to the Flood Hazard Regulations and the City Council hearing date on the Department's Transportation and Development Services Division web page.

COORDINATION

This memorandum and ordinance have been reviewed by the City Attorney's Office. Additionally, staff has coordinated the proposed changes with the Department of Planning, Building and Code Enforcement and the Federal Emergency Management Agency (FEMA).

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CEQA

Exempt: File No. PP05-217.

A handwritten signature in black ink, appearing to read "D. D. Syl" followed by a stylized flourish or initials.

KATY ALLEN
Director, Public Works Department

HF:MA:des
Attachment
(111505.CM/flood)

REVISIONS TO CHAPTER 17.08

SPECIAL FLOOD HAZARD AREA REGULATIONS

Parts:

- 1 Title and Scope**
- 2 Definitions**
- 3 Designation of Flood Hazard Areas**
- 4 General Provisions**
- 5 Requirements for Special Flood Hazard Area**
- 6 Variances**

Part 1

TITLE AND SCOPE

Sections:

- 17.08.010 Short title.**
17.08.020 Purpose.

17.08.010 Short title.

This chapter shall be known as the “San José special flood hazard area regulations,” may be cited as such, and will be referred to herein as “this chapter.”
(Prior code § 8941.1; Ord. 21000.)

17.08.020 Purpose.

It is the purpose of the provisions of this chapter to adopt certain special flood hazard area regulations, consistent with criteria set forth in Sections 1909 and 1910 of the National Flood Insurance Program Regulations (subchapter B of Chapter X of Title 24 of the Code of Federal Regulations).
(Prior code § 8941.2; Ord. 21000.)

Part 2

DEFINITIONS

Sections:

- 17.08.030 Definitions.**
17.08.032 Accessory structure.
17.08.034 Administrator.
17.08.036 Base flood or one hundred year flood.
17.08.038 Base flood elevation.
17.08.040 Basement.
17.08.042 Building.

<u>17.08.044</u>	<u>Coastal high hazard area.</u>
<u>17.08.046</u>	<u>Crawlspace.</u>
<u>17.08.048</u>	<u>Development.</u>
<u>17.08.050</u>	<u>Director.</u>
<u>17.08.052</u>	<u>Elevation certification.</u>
<u>17.08.054</u>	<u>Flood, flooding or flood water.</u>
<u>17.08.056</u>	<u>Floodplain or flood-prone area.</u>
<u>17.08.058</u>	<u>Flood hazard boundary map (FHBM).</u>
<u>17.08.060</u>	<u>Flood insurance rate map (FIRM).</u>
<u>17.08.062</u>	<u>Floodproofing.</u>
<u>17.08.064</u>	<u>Floodway.</u>
<u>17.08.066</u>	<u>Highest adjacent grade.</u>
<u>17.08.068</u>	<u>Historic structure.</u>
<u>17.08.070</u>	<u>Lowest floor.</u>
<u>17.08.072</u>	<u>Major repairs.</u>
<u>17.08.074</u>	<u>Manufactured home; Mobilehome.</u>
<u>17.08.076</u>	<u>Manufactured home park or subdivision; Mobilehome park.</u>
<u>17.08.078</u>	<u>Market value.</u>
<u>17.08.080</u>	<u>Mixed-use structure.</u>
<u>17.08.082</u>	<u>New manufactured home park or subdivision.</u>
<u>17.08.084</u>	<u>National geodetic vertical datum (N.G.V.D.).</u>
<u>17.08.086</u>	<u>Official map or official maps.</u>
<u>17.08.088</u>	<u>Recreational vehicle.</u>
<u>17.08.090</u>	<u>Regulatory floodway.</u>
<u>17.08.092</u>	<u>Repetitive loss.</u>
<u>17.08.094</u>	<u>Riverine.</u>
<u>17.08.096</u>	<u>Special flood hazard area.</u>
<u>17.08.098</u>	<u>Structure.</u>
<u>17.08.100</u>	<u>Substantial damage.</u>
<u>17.08.102</u>	<u>Substantial improvement.</u>
<u>17.08.104</u>	<u>Variance.</u>
<u>17.08.106</u>	<u>Water surface elevation.</u>

17.08.030 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.032 Accessory structure.

“Accessory structure” means a detached structure on the same parcel or site with, and of a nature customarily incidental and subordinate to, the main structure. This structure shall be used solely for parking (residential garages with gross floor area of 650 square feet or smaller) or limited storage (low-cost sheds with gross floor area of 200 square feet or smaller).

17.08.034 Administrator.

“Administrator” means the federal insurance administrator, to whom the secretary of the interior has delegated the administration of the national flood insurance program.
(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.036 Base flood or one hundred year flood.

“Base flood” or “one hundred year flood” means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.
(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.038 Base flood elevation.

“Base flood elevation” or “BFE” is the computed elevation to which the flood water is anticipated to rise during the base flood.

17.08.040 Basement.

“Basement” means any enclosed area of a structure having its lowest floor more than two feet below grade level on all sides.

17.08.042 Building – see “Structure”.

17.08.044 Coastal high hazard area.

“Coastal high hazard area” means the portion of a coastal flood area having special flood hazards that is subject to high velocity waters, including hurricane wave wash and tsunami.
(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.046 Crawlspace.

“Crawlspace” means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawlspaces having the lowest floor two feet or less below grade level on all sides shall not be considered a basement.

17.08.048 Development.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, construction or modification of buildings or other structures, mining, dredging, trenching, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

17.08.050 Director.

Unless otherwise specified in this chapter, “Director” shall mean the Director of Public Works of the city of San José and his or her designee.

17.08.052 Elevation certification.

“Elevation certification” means certification of finished floor elevation as prescribed by the national flood insurance program and this chapter.
(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493.)

17.08.054 Flood, flooding or flood water.

“Flood”, “flooding”, or flood water means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, or other inland water, or abnormally high tidal water or rising coastal waters proximately caused by severe storms, hurricanes, or tsunamis. It also includes the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents exceeding anticipated cyclical levels.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.056 Floodplain or flood-prone area.

“Floodplain” or “flood-prone area” means any land area susceptible to being inundated by water from any source - see “Flooding”.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.058 Flood hazard boundary map (FHBM).

“Flood Hazard Boundary Map” (FHBM) means the Federal Insurance Administration Flood Hazard Boundary Map No. 01-64 for the city of San José, Community No. 060349, as promulgated by the Secretary of Housing and Urban Development on January 24, 1975, and dated August 2, 1982, and as may be amended from time to time, which is hereby adopted for the sole purpose of complying with the National Flood Insurance Act of 1968, its amendments, and the regulations which have been adopted pursuant thereto; provided, however, that in addition to such areas identified on such official maps, such areas shall include all land within the city that, immediately prior to annexation thereto, was designated on the Federal Insurance Administration Flood Hazard Boundary Map (FHBM) and the Flood Insurance Rate Map (FIRM) of the county of Santa Clara, as amended.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.060 Flood insurance rate map (FIRM).

“Flood Insurance Rate Map” (FIRM) means the Federal Insurance Administration Flood Insurance Rate Map (FIRM) for the city of San José, Community No. 060349, as promulgated by the Secretary of Housing and Urban Development on January 24, 1975, and dated August 2, 1982, and as may be amended from time to time, which is hereby adopted for the sole purpose of complying with the National Flood Insurance Act of 1968, its amendments, and the regulations which have been adopted pursuant thereto; provided, however, that in addition to such areas identified on such official maps, such areas shall include land within the city that, immediately prior to annexation thereto, was designated on the flood insurance administration flood hazard boundary map (FHBM) and the effective flood insurance rate map (FIRM) of the county of Santa Clara, as amended.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.062 Floodproofing.

“Flood proofing” means any combination of structural and nonstructural additions, changes, or adjustments to properties or structures which reduce or eliminate flood damage to lands, water

and sanitary facilities, structures, or their contents, including but not limited to dry floodproofing and wet floodproofing as defined herein.

A. “Dry floodproofing” means Floodproofing measures that are designed to prevent flood waters from entering a structure. Dry floodproofing techniques may include, but are not limited to, installation of closure and sealants, watertight walls, small floodwalls or levees, flood shields, and watertight doors.

B. “Wet floodproofing” means Floodproofing measures that minimize damage to a structure and its contents from flood water that is allowed into the structure.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.064 Floodway – see “Regulatory floodway”.

17.08.066 Highest adjacent grade.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

17.08.068 Historic structure.

“Historic structure” means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
- C. Individually listed on the State Inventory of Historic Places with the California Office of Historic Preservation; or
- D. Individually listed in a City inventory of historic resources.

17.08.070 Lowest floor.

“Lowest Floor” means the lowest floor of the lowest enclosed area of a structure, including basement (see “Basement” definition). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or limited storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure meets the applicable non-elevation design requirements of subsections A.2. through A.6., inclusive, and A.10. of Section 17.08.350 of this chapter.

(Ord. 25738.)

17.08.072 Major repairs.

“Major repairs” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds twenty-five percent (25%) of the market value of the structure before any repair takes place.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.074 Manufactured home; Mobilehome.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. Manufactured home includes “Mobilehome” as defined in Section 788.3 of the California Civil Code, but does not include “recreational vehicle” as defined in Section 799.29 of the California Civil Code and Section 18010 of the California Health and Safety Code or “commercial coach” as defined in Section 18001.8 of the California Health and Safety Code.

(Ord. 25738.)

17.08.076 Manufactured home park or subdivision; Mobilehome park.

“Manufactured home park or subdivision” and “Mobilehome park” mean a parcel (or contiguous parcels) of land divided into two or more lots or sites for rent or sale, or that are held out for rent or sale, to accommodate manufactured homes or mobilehomes for human habitation.

(Ord. 25738.)

17.08.078 Market value.

“Market value” means the current estimated fair market value of a structure, excluding the current estimated fair market value of the land on which the structure is located and the current estimated fair market value of any landscaping, and any detached accessory structures on such land. The current tax assessed value of the structure as provided by the county tax assessor’s office shall be used as the market value of the structure where the cost of the proposed improvement to the structure does not exceed forty percent (40%). In the event the cost of the improvement to the structure exceeds forty percent (40%) of the current tax assessed value of the structure, the director shall estimate the market value or, in the alternative, market value shall be determined from an independent appraisal prepared by a qualified professional appraiser using a building cost estimating method recognized by the building construction industry, which shall be reviewed and accepted by the director.

17.08.080 Mixed-use structure.

“Mixed-use structure” means any structure that has only nonresidential uses in areas of the structure at or below the base flood elevation, but has residential uses in areas of the structure above the base flood elevation.

17.08.082 New manufactured home park or subdivision.

“New manufactured home park or subdivision” means a Manufactured home park or subdivision, or a Mobilehome park, for which the construction of facilities for servicing the lot on which the manufactured home or mobilehome is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of floodplain management regulations adopted by the city of San José.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.084 **National geodetic vertical datum (N.G.V.D.).**

“National geodetic vertical datum” or N.G.V.D. refers to a fixed reference adopted as a standard geodetic datum for heights and shown on the FIRMs.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.086 **Official Map or official maps**

“Official Map” means either the FHBM or the FIRM. “Official Maps” means the FHBM and the FIRM collectively.

17.08.088 **Recreational vehicle.**

“Recreational vehicle” is as defined in the California Health and Safety Code Section 18010.
(Ord. 25738.)

17.08.090 **Regulatory floodway.**

“Regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.092 **Repetitive loss.**

“Repetitive loss” means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred.

17.08.094 **Riverine.**

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

17.08.096 **Special flood hazard area.**

“Special flood hazard area” means an area in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year. It is shown on a FHBM or FIRM as Zone A, AO, A1-A30, AE, A99 or AH on the city of San José’s FIRMs.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.098 **Structure.**

“Structure” means:

A. any walled and roofed building that is principally above ground (including a manufactured home); and

B. a gas or liquid storage tank that is principally above ground.

(Ord. 25738.)

17.08.100 Substantial damage.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

17.08.102 Substantial improvement.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. If multiple or phased improvements to a structure are involved, total costs shall include all cumulative costs for a consecutive five (5) year period prior to the start of construction of the most recent improvement. This term includes structures which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;
- or;
- B. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

17.08.104 Variance.

“Variance” means a grant of relief from the requirements of this Chapter which permits construction in a manner that would otherwise be prohibited by this Chapter.

17.08.106 Water surface elevation.

“Water surface elevation” means the heights, in relation to N.G.V.D., expected to be reached by floods of various magnitudes and frequencies at pertinent points in the coastal or riverine flood areas.

(Prior code § 8943.1; 17.08.030-17.08.190; Ords. 21000, 21493, 25738.)

Part 3

DESIGNATION OF FLOOD HAZARD AREAS

Sections:

- 17.08.200 Application of chapter.**
- 17.08.210 Use of available data.**
- 17.08.220 Public access.**

17.08.200 Application of chapter.

The provisions of this chapter apply to those areas of the city of San José designated on the Official Maps.

(Prior code § 8942.1; Ords. 21000, 21493.)

17.08.210 Use of available data.

When base flood elevation data has not been provided, the director shall obtain, review, and reasonably utilize any authoritative base flood elevation data available from a federal, state or other source, in order to administer the provisions of Part 5, below.

(Ord. 21000.)

17.08.220 Public access.

A copy of the Official Maps shall be filed with the city clerk and shall be available for use and examination by the public.

(Prior code § 8942. 2; 17.08.210; Ords. 21000, 21493.)

Part 4

GENERAL PROVISIONS

Sections:

17.08.300 Applicability of special flood hazard area regulations.

17.08.310 Flood area management.

17.08.320 Review of building permit applications.

17.08.300 Applicability of special flood hazard area regulations.

Nothing in this chapter shall be construed to relieve any persons of requirements imposed by other sections of this code, except that the provisions of this chapter relating to measures designed to reduce flood losses shall take precedence over any other provisions of this code which are in conflict.

(Prior code § 8944.2; 17.08.250; Ord. 21000.)

17.08.310 Flood area management.

The director shall consider flood area management programs, if any, in effect in neighboring areas. Prior to approval by the city of San José of any project which alters or relocates a watercourse, the director shall notify adjacent communities in riverine situations and the state coordination office and submit copies of such notification to the administrator. The director shall take such appropriate action(s) to assure the maintenance of flood-carrying capacity within such altered or relocated portion of such watercourse. The director shall not approve development which will significantly impact adjacent property by raising water levels above acceptable levels, as specified in the national flood insurance program regulations as set forth in Section 17.08.370. The director shall accept from applicants, maintain for public inspection, and make available as needed for flood insurance policies the following certifications: (a) the elevation required in subsections A.7., A.8.a., and A.8.b. of Section 17.08.350; (b) the floodproofing required in subsection A.8.c. of Section 17.08.350; and (c) the anchoring as required in Section 17.08.370.B.

(Prior code § 8944.1; 17.08.260; Ords. 21000, 21493, 25738.)

17.08.320 Review of building permit applications.

The building official shall review all building permit applications for major repairs, new construction or substantial improvements, and new developments or subdivisions to determine whether the site is reasonably safe from flooding.
(Ord. 21000.)

Part 5

REQUIREMENTS FOR SPECIAL FLOOD HAZARD AREA

Sections:

- 17.08.330 Special flood hazard area.**
- 17.08.340 Major repairs.**
- 17.08.350 New construction or substantial improvements.**
- 17.08.360 Standards for utilities.**
- 17.08.370 New developments.**
- 17.08.380 Mobilehome parks and mobilehome subdivisions.**
- 17.08.390 Standards for subdivisions.**
- 17.08.400 Compliance with federal or state law.**

17.08.330 Special flood hazard area.

The special flood hazard area shall consist of any land within the city identified on an official map of the city or the county of Santa Clara (prior to annexation) as a special flood hazard area, for which water elevation data for the one hundred-year flood is sufficient to identify the floodway or coastal high hazard area.
(Prior code § 8945.1; 17.08.270; Ords. 21000, 21493.)

17.08.340 Major repairs.

The building official shall review building permit applications for major repairs within the special flood hazard area. No building permit shall be issued unless the building official determines that the proposed repair (a) uses construction materials and utility equipment that are resistant to flood damage, and (b) uses construction methods and practices that will minimize flood damage.

The applicant for a permit hereunder shall present drawings, plans, specifications and any other data or information which the building official may require.

(Prior code § 8945.2; 17.08.280; Ord. 21000.)

17.08.350 New construction or substantial improvements.

A. The building official shall review all building permit applications for new construction or substantial improvements of structures within the special flood hazard area. No building permit shall be issued unless the building official determines that the proposed construction, repair, reconstruction or improvement, including manufactured homes, if any are permitted, pursuant to Titles 19 and 20 of this code meets all of the following requirements:

1. Is protected against flood damage;
2. Is adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic or hydrostatic loads, including the effect of buoyancy;
3. Uses construction materials and utility equipment that are resistant to flood damage;
4. Uses construction methods and practices that will minimize flood damage;
5. Uses electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
6. If within Zones AH or AO as shown on the FIRM, has adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures;
7. **Residential Construction.** Excepting residential construction in Zone A99, all new construction of any residential structure or substantial improvements of such a residential structure shall have the lowest floor, including basement, comply with all the requirements of subsections A.1. through A.6. of this section and the requirements of the applicable flood hazard zone in subsections A.7.a. and A.7.b. below. For residential structures, attached garages may be built at grade provided that such garages also meet the design requirements of subsection A.10. of this section. All subgrade enclosed areas (except crawlspaces) are considered to be basements and are prohibited in residential structures (see "Basement" definition). This prohibition includes below-grade parking garages and below-grade storage areas.
 - a. **Zone AO.** Elevated to or above the depth number specified on the FIRM. If there is no depth number on the FIRM, the lowest floor, including basement, shall be elevated two feet above the highest adjacent grade. Upon completion of the structure, the director or a registered professional engineer or surveyor shall certify that the structure is elevated as set forth in this subparagraph and, if certified by a professional engineer or surveyor, shall provide such certification to the director as set forth in Section 17.08.310.
 - b. **Zones A, A1-A30, AE or AH.** Elevated to or above the base flood elevation specified on the FIRM or the best available data as defined in Section 17.08.210 when base flood elevation has not been provided. Upon completion of the structure, the elevation on N.G.V.D. datum showing the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor and provided to the director as set forth in Section 17.08.310.
8. **Nonresidential and Mixed-use Construction.** Excepting nonresidential and mixed-use construction in Zone A99, all new construction of any nonresidential or mixed-use structure or substantial improvements of such structures shall comply with all the requirements of subsections A.1. through A.6. above and be in conformance with the elevation requirements of the applicable flood hazard zone or the alternative flood hazard requirement as specified below:
 - a. **Zone AO.** Elevated to or above the depth number specified on the FIRM. If there is no depth number on the FIRM, the lowest floor, including basement, shall be elevated two feet above the highest adjacent grade. Upon completion of the structure, the director or a registered professional engineer or surveyor shall certify that the structure is elevated as set forth in this subparagraph and, if certified by a professional engineer or surveyor, shall provide such certification to the director as set forth in Section 17.08.310.

- b. **Zones A, A1-A30, AE or AH.** Elevated to or above the base flood elevation specified on the FIRM or the best available data as defined in Section 17.08.210 when base flood elevation has not been provided. Upon completion of the structure, the elevation on N.G.V.D. datum showing the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor and provided to the director as set forth in Section 17.08.310.
- c. **Alternative Flood Hazard Requirement.** With attendant utility and sanitary facilities:
 - i) Be dry floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - iii) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the director as set forth in Section 17.08.310;
- 9. **Zone A99 Construction.** The Zone A99 flood hazard areas are designated by a Federal Emergency Management Agency (FEMA) Letter of Map Revision. These areas have received additional flood protection due to the construction of improvements such as dikes, dams or levees. No base flood elevation has been designated for Zone A99. The requirements of subsections A.1. through A.5. of this section and Section 17.08.370 do not apply to the Zone A99 flood hazard area. For new construction and substantial improvements in Zone A99, the permit applicant shall be provided a written notice of the flood risk in a form acceptable to the city attorney. All property owners shall acknowledge the receipt of the written notice and acknowledge in writing that they do not elect to voluntarily comply with the requirements of subsections A.1. through A.5. of this section and Section 17.08.370.
- 10. **Enclosed Areas Below the Lowest Floor.** All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or limited storage, and which are subject to flooding, shall be designed to provide wet floodproofing and shall automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following minimum criteria:
 - a. Be certified by a registered professional engineer or architect; or
 - b. Have a minimum of two (2) openings having a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- 11. **Crawlspace Construction.** All crawlspaces shall comply with all the requirements of subsections A.2. through A.5. of this section and the design requirements of subsection A.10. of this section. Below-grade crawlspaces for new construction and substantial improvements shall be designed and certified by a registered professional engineer to meet the following additional requirements:
 - a. The interior grade of the crawlspace below the base flood elevation must not be more than two (2) feet below the lowest adjacent exterior grade;

- b. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point;
- c. The velocity of floodwaters at the parcel or site should not exceed five (5) feet per second;
- d. There must be an adequate drainage system that removes floodwaters from the enclosed interior area of the crawlspace within a reasonable amount of time, not to exceed seventy-two (72) hours after the end of a flood event. The drainage system may include natural drainage through porous, well-drained soils, or drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.
- e. Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements. However, applicants who construct structures that have below-grade crawlspaces are hereby advised that such structures will have higher flood insurance premiums than structures that have crawlspaces with interior elevations at or above the lowest adjacent exterior grade.

12. Accessory Structures. An exemption to the elevation or dry floodproofing standards may be granted for accessory structures used solely for parking (residential garages with gross floor area of 650 square feet or smaller) or limited storage (low-cost sheds with gross floor area of 200 square feet or smaller). Such structures shall not be used for human habitation and must meet the requirements of subsections A.2. through A.6., inclusive, the design requirements of subsection A.10. of this section, and the encroachment provisions of subsection D of Section 17.08.370. Portions of the structure with uses other than parking and limited storage must meet the elevation requirements of the applicable special flood hazard zone in subsection A.7. of this section.

13. Manufactured Homes. Manufactured homes shall meet the above standards and also the standards in Sections 17.08.370 and 17.08.380.

- B. In making said determination, the building official shall review and reasonably utilize any base flood elevation data available, principally the FIRM, which has been provided by the administrator. The applicant for a permit hereunder shall present drawings, plans, specifications, a certificate of elevation, and any other data or information which the building official may require.

(Prior code § 8945.3; 17.08.290; Ords. 21000, 21493, 21761, 21817, 25738.)

17.08.360 Standards for utilities.

All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 21000.)

17.08.370 New developments.

- A. The director shall review subdivision applications and other proposed new development applications in the special flood hazard area to assure that:
 - 1. All such applications are consistent with the need to minimize flood damage;

2. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage; and
 3. Adequate drainage is provided so as to reduce exposure to flood hazards. Such subdivision applications and other proposed new development applications shall include base flood elevation data available from federal, state and local sources.
- B. The building official shall require that all manufactured homes to be placed within such special flood hazard areas be anchored to resist flotation, collapse or lateral movement by providing over-the-top or frame ties to ground anchors. Specific requirements shall be determined by the building official, and shall include an elevation certificate, but in no way are to be of lesser magnitude than those specified in the federal insurance administration's national flood insurance program revised regulations (44 C.F.R., Part 60). Pursuant to state law, certification meeting the standards above is required of the local enforcement agency responsible for regulating the placement, installation and anchoring of individual manufactured home units.
- C. The director shall require that until a floodway is designated by the Administrator, no new construction, subdivision, improvement or other development, including fill, shall be permitted within a special flood hazard area on the community FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- D. The director shall prohibit encroachments, including fill, new construction, substantial improvement, and other development within designated floodways unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (Prior code § 8945.4; 17.08.300; Ords. 21000, 21493, 25738.)

17.08.380 Mobilehome parks and mobilehome subdivisions.

The building official shall review building permit applications for manufactured home parks and subdivisions. The following standards, in addition to those set forth in Title 25, Chapter 2 of the California Code of Regulations, are required for (a) manufactured homes not placed in manufactured home parks or subdivisions, (b) new manufactured home parks or subdivisions, (c) expansions to existing manufactured home parks or subdivisions and, (d) repair, reconstruction, or improvements to existing manufactured home parks or subdivisions that equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced. No building permit shall be issued unless the building official determines all of the following:

1. Adequate surface drainage and access for a refuse hauler shall be provided;
2. All manufactured homes shall be placed on pads or lots elevated on compacted fill or on pilings so that the lowest floor of the manufactured home is at or above the base flood level. If elevated on pilings:
 - a. The lots shall be large enough to permit steps;
 - b. The pilings shall be placed in stable soil no more than ten feet apart; and
 - c. Reinforcement shall be provided for pilings more than six feet above the ground level;
3. No manufactured homes shall be placed within a regulatory floodway except in existing manufactured home parks and subdivisions pursuant to regulations promulgated by the

Federal Emergency Management Agency (Title 44, Emergency Management and Assistance Section 60.3, subsection (d)4).
(Ords. 21000, 21493, 21761, 25738.)

17.08.390 Standards for subdivisions.

All subdivision applications shall identify the flood hazard area and the elevation of the base flood. All new subdivision applications (including applications for manufactured home parks and subdivisions) within Zone A which create more than fifty (50) parcels or sites, or involve more than five (5) acres of land, whichever is less, shall provide base flood elevation data to the director. All final subdivision plans shall identify the location and provide the elevation of proposed structure(s) and pad(s). If the parcel or site is filled above the base flood elevation, the lowest floor and final pad elevations shall be certified by a registered professional engineer or surveyor and provided to the director. All subdivision applications shall be consistent with the need to minimize flood damage. All subdivision applications shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage. All subdivision applications shall have adequate drainage provided to reduce exposure to flood damage as set forth in Section 17.08.370.
(Ords. 21000, 21493.)

17.08.400 Compliance with federal or state law.

All ministerial and discretionary permits issued by the city of San José for major repairs, new construction, substantial improvements, and new development shall be reviewed by the appropriate departmental official to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 (as amended) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
(Ord. 21000.)

Part 6

VARIANCES

Sections:

- 17.08.410 Purpose.**
- 17.08.420 Variances.**
- 17.08.430 Variances, petitions for - Form of such petition - Where filed, and requisites before director may accept for filing.**
- 17.08.440 Investigation and hearing by director.**
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- 17.08.460 Action by director.**
- 17.08.470 Findings required for issuance of variance permit.**
- 17.08.480 Petition - Time for director's action - Hearing required.**
- 17.08.500 Hearings.**
- 17.08.510 Notification to petitioner.**
- 17.08.520 Variance permit, recordkeeping and report required.**

- 17.08.530 Filing fees for petitions.**
- 17.08.540 Effective date of variance permit.**
- 17.08.550 Warning and disclaimer of liability.**

17.08.410 Purpose.

Variances may be granted pursuant to the provisions of this part.
(Prior code § 8946.1; 17.08.350; Ord. 21000.)

17.08.420 Variances.

Pursuant to and in accordance with the provisions of this part, the director may, but shall not under any circumstances be required to, grant a variance from the regulations and provisions of this chapter.
(Prior code § 8946.2; 17.08.360; Ords. 21000, 21493.)

17.08.430 Variances, petitions for - Form of such petition - Where filed, and requisites before director may accept for filing.

Petitions for variances shall be filed in writing with the director on a form furnished by the director. The form of the petition and the information and data required to be set forth therein shall be as prescribed by the director. The director shall not accept any such petition for filing unless:

- A. All information and data are set forth and shown as required by the form, to include elevation certification on N.G.V.D. datum;
- B. The petition is verified;
- C. The petition shall be signed by all of the owners (or the agents of the owners) of the parcel or site; and
- D. The filing fee required by Section 17.08.530 has been paid;
- E. Applicant shall supply all documents and data necessary, including but not limited to any applicable subdivision or development application and supporting documents, for director to evaluate variance application at no cost to city.

(Prior code § 8946.3; 17.08.370; Ords. 21000, 21493.)

17.08.440 Investigation and hearing by director.

The director shall conduct an investigation on each petition accepted for filing. Each such investigation shall include an opportunity for the petitioner to appear before and be heard by the director. The director shall not act on any petition unless the director has given the petitioner an opportunity to be heard thereon. Notice of the time and place at which the petitioner may appear before the director and be heard shall be given by mailing to him, postage prepaid, at the address shown on his petition, at least seven days before the date on which he will be heard. The form of such notice shall be as prescribed by the director.

(Prior code § 8946.4; 17.08.390; Ord. 21000.)

17.08.450 By whom issued - No right to issuance.

Pursuant to and in accordance with the provisions of this part, the director may issue variance permits. Under no circumstances shall any petitioner have the right to have a variance permit issued for the parcel or site included in the petition; and nothing contained in this part shall, in any event or under any circumstances, be deemed or construed to confer on any petitioner the right to have a variance permit issued for such parcel or site.

(Prior code § 8946.5; 17.08.400; Ords. 21000, 21493.)

17.08.460 Action by director.

In taking action, the director may deny the petition or issue a variance permit for the parcel or site covered by the petition. The director may make any variance permit which the director may issue subject to such terms, provisions and conditions as the director may deem reasonably necessary to secure the general purposes of this chapter.

(Prior code § 8946.6; 17.08.410; Ords. 21000, 21493.)

17.08.470 Findings required for issuance of variance permit.

A. The director shall not issue a variance permit for such parcel or site unless the director makes all of the following findings upon the issuance of the variance permit including all conditions thereto:

1. Will not result in any increase in flood levels during the base flood discharge within any designated regulatory floodway;
2. That the failure to grant the variance will result in exceptional hardship to the petitioner. Exceptional hardship includes those matters that are exceptional, unusual or peculiar to the site or parcel that is the subject of the application for variance to the extent that the site or parcel cannot be developed for any viable use without a variance. Exceptional hardship does not include any of the following:
 - a. economic or financial hardship to the applicant in complying with the regulations and provisions of this chapter,
 - b. requiring the property owner to build elsewhere,
 - c. requiring a different use of the parcel than intended in the application by the property owner,
 - d. inconvenience to the property owner,
 - e. aesthetic considerations,
 - f. personal preferences or disapproval of the property owner or neighboring property owners.
3. Will not result in increased flood heights, additional threats to public health or safety, damage to the property of another, additional public expense; create a nuisance; cause fraud on or victimization of the public; or conflict with existing city ordinances; and
4. Is the minimum variance from the regulations and provision of this chapter necessary to afford relief.

B. Under no circumstances shall any petitioner have the right to have a variance permit issued for any such parcel or site, and nothing contained in the preceding paragraph of this section shall in any event or under any circumstances be deemed or construed to confer upon any petitioner the right to have a variance permit issued for such parcel or site.

(Prior code § 8946.7; 17.08.420; Ords. 21000, 21493.)

17.08.480 Petition - Time for director's action - Hearing required.

Unless the petitioner agrees to an extension of time, the director shall act on his petition within forty (40) days after the petition was filed. Before the director may take action on the petition, the director must conduct at least one (1) hearing on the matter. The director may, before taking action, conduct more than one (1) hearing. Any action taken by the director shall be in writing and shall be filed in the Director's office. At the time the director files the same, the director shall mail notice thereof to the petitioner, and to all other persons who have requested in writing such notice. A separate written request for notice must be filed for each proceeding. Once the director has taken action, the director shall not (in the same proceeding) reconsider his or her action.

If the director fails to take action within the forty-day period above provided, or within such extension of time as may have been agreed to by the petitioner, the director shall not thereafter take action, and the petition shall be deemed denied.

(Prior code § 8946.8; 17.08.430; Ords. 21000, 21493.)

17.08.500 Hearings.

The director shall set the date for all hearings conducted under this part.

(Prior code § 8946.10; 17.08.450; Ords. 21000, 21493.)

17.08.510 Notification to petitioner.

Any variance permit issued pursuant to the provisions of this part, which authorizes the construction of a structure below the base flood level, shall notify the permittee of the following:

1. The issuance of the variance permit to construct a structure below the base flood level will likely result in increased premium rates for flood insurance; and
2. Such construction below the base flood level increases health and safety risks to life and property upon the parcel or site that is the subject of the variance.

(Prior code § 8946.11; 17.08.460; Ord. 21000.)

17.08.520 Variance permit, recordkeeping and report required.

The director shall forward a copy of each variance permit issued, pursuant to the provisions of this part, to the city clerk and shall cause a certified copy of such permit to be recorded in the office of the county recorder of the county of Santa Clara. Each such variance permit shall be reported to the federal insurance administrator by the director as a part of the annual report submitted to such administrator by the city.

(Prior code § 8946.12; 17.08.470; Ords. 21000, 21493.)

17.08.530 Filing fees for petitions.

The petition for a variance permit shall be as set forth in the schedule of fees established by resolution of council. Said fees are required to defray city's cost and expense in conducting the proceedings following such filing.

(Prior code § 8946.13; 17.08.380; Ords. 21000, 21295.)

17.08.540 Effective date of variance permit.

No variance permit shall become effective unless and until the permittee, in writing, on a form which shall have been provided by the city and which shall have been signed and acknowledged by such permittee:

- A. Has accepted the variance permit with required notarized signatures from all property owners or their legal representatives; and
- B. Has agreed to be bound, and to do all the things required of him or her, as required by the terms, provisions and conditions of such permit, and the provisions of this chapter applicable to such permit.
- C. Has paid in advance the city's recordation costs that are in addition to the filing fees required in Section 17.08.530.
- D. Shall defend, indemnify, and hold harmless the city and its agents, officers, and employees from any claim, action, or proceeding against the city or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the city, advisory agency, appeal board, or legislative body concerning the variance. The city shall promptly notify the permittee of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event the city fails to promptly notify the permittee of any claim, action, or proceeding, or if the city fails to cooperate in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the city. Nothing in this Section prohibits the city from participating in the defense of any claim, action, or proceeding if city bears its own attorney's fees and costs and defends the action in good faith. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the permittee.

(Prior code § 8946.14; 17.08.480; Ords. 21000, 21493.)

17.08.550 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of San José, any officer or employee thereof, or the federal insurance administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 21493.)